

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12

SCI FUNERAL SERVICES OF FLORIDA, INC.¹

Employer

and

Case 12-RC-8489

NORTHEAST FLORIDA PUBLIC EMPLOYEES' LOCAL 630,
affiliated with LABORERS' INTERNATIONAL
UNION OF NORTH AMERICA, AFL-CIO²

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,³ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it

¹ The name of the Employer appears as amended at the hearing.

² The name of the Petitioner appears as amended at the hearing.

³ The brief filed by the Employer has been carefully considered. The Petitioner did not file a brief.

will effectuate the purposes of the Act to assert jurisdiction herein.⁴

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees employed by the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Petitioner seeks an election in a unit of all employees including employees in the positions of staff specialist I, staff specialist II, senior staff specialist, grounds facility assistant, grounds facility specialist, senior grounds facility specialist, grounds facility supervisor, funeral director intern, associate funeral director, funeral director, senior funeral director, apprentice embalmer, embalmer intern, associate embalmer, embalmer, senior embalmer, crematory operator, mechanic, maintenance employees, drivers, receptionist/PBX, clerk, funeral detail clerk, funeral home secretary, secretary, contract processor, dispatcher, compliance/training coordinator, floral designer and family service counselor employed by the Employer in certain facilities located in Duval and Clay Counties in the State of Florida, known as the Jacksonville Cluster,⁵ except that it seeks to exclude all telemarketers, confidential employees, guards and supervisors as defined in the Act.⁶

⁴ SCI Funeral Services of Florida, Inc., herein called the Employer, is a corporation licensed to do business in the State of Florida, which is engaged in the operation of funeral homes and cemeteries in Duval and Clay Counties, Florida. During the past 12 months, the Employer derived gross revenues in excess of \$500,000, and during the same period of time, has purchased and received at its Duval and Clay County facilities goods and materials valued in excess of \$50,000, directly from points outside the State of Florida.

⁵ The petitioned-for unit consists of nine facilities: Hardage Giddens Funeral Home, Holly Hills Funeral Home and Memorial Park, Town and Country Funeral Home, Riverside Memorial Park, Edgewood Cemetery, Greenlawn Funeral Home, Greenlawn Memorial Park, Chapel Hills Cemetery, and Beaches Memorial Park.

⁶ The unit appears as amended at the hearing.

The Employer contends that its telemarketers share a sufficient community of interest with the other petitioned-for unit employees and should be included in the unit. The Employer also contends that the grounds facility supervisors should not be included in the unit because they are supervisors as defined by Section 2(11) of the Act.

There are approximately 100 employees in the Petitioner's proposed unit and 110 employees in the Employer's proposed unit.⁷ The Petitioner will proceed to an election in an alternate unit as found appropriate by the undersigned. There is no history of collective bargaining among any of these employees of the Employer.

The Employer provides funeral home services to customers on both a "pre-need" (before a death occurs) and "at-need" (following a death) basis. These services include, but are not limited to, removal and preparation of bodies for burial, entombment or cremation, memorial services, shipment to other facilities for burial or entombment, grave-side services, and actual burial, entombment or cremation. The Employer also provides cemetery property (plots and mausoleum niches) and related maintenance.⁸

The Hardage Giddens Funeral Home, located at 517 Park Street, Jacksonville, is the administrative and preparation facility for the Jacksonville Cluster.⁹ The area vice president is responsible for all operations in the Jacksonville Cluster. The main switchboard for the Jacksonville Cluster is located at the Hardage Giddens Funeral Home.

The Edgewood facility has two funeral directors and a chapel manager. The Edgewood facility's normal hours are 8:00 a.m. to 5:00 p.m. If there is an evening

⁷ At the hearing, the parties stipulated to include 2 to 3 floral designers and 25 family counselors in the proposed unit.

⁸ In its post-hearing brief, the Employer refers to the description of operations described in a prior hearing in Case 12-RC-8177 involving a similar unit in the Employer's "Broward Cluster" (Broward and Dade Counties). I take notice of the Decision and Direction of Election in that case.

⁹ At the hearing, the witnesses referred to Hardage Giddens as the Park Street facility.

visitation, the hours are extended anywhere from 8:00 p.m. to 10:00 p.m. The Edgewood facility is a two-story building. The second floor is comprised of two rooms set up as offices with a couple of desks and telephones. There is a side door that provides access to the stairway that leads to the second floor.

The funeral directors oversee the chapels and funeral homes. The funeral directors meet with families, make funeral arrangements, and assist the receptionist with flowers during the day. A funeral director has telephone contact with other employees at his facility and other facilities. For instance, funeral directors make many calls a day to Hardage Giddens to the administration office, to preparation, and to dispatch. Funeral directors and staff associates interact daily.

Employees who have contact with families dress professionally. The embalmers dress casually but have suits with them in case they have to deal with families. Crematory operators and telemarketers dress casually. Grounds facility employees wear shirts with name tags provided by the Employer.

There is record evidence that there is some interchange between funeral directors, embalmers, staff associates, receptionists, switchboard operators, and drivers. There is no record evidence of interchange between telemarketers and other employees, such as the switchboard operators, staff associates, funeral directors, and embalmers.

There are approximately 12 to 15 telemarketers employed by the Employer in Duval and Clay counties. Telemarketers are hired directly by the Employer. The Employer provides them with lists that telemarketers use to set up appointments. Telemarketers do not engage in sales. Their primary duty is to make calls to set up pre-need appointments to sell funeral services and cemetery property. However, occasionally they are also required to make calls for delinquencies on account receivables. For instance, at the end of the year, the telemarketers are required to call

people to remind them that their payments are due. The clerical staff, clerks, secretaries, and funeral detail clerks, are also assigned to make the same type of account receivable calls. Telemarketers sometimes do administrative duties like checking the “do not call” lists. The “do not call” list is a list of residents who do not wish telemarketing firms to call their homes and is generated by the Department of Agriculture and Consumer Affairs on a quarterly basis. Telemarketers also do special projects like checking files or updating files. There does not appear to be any day-to-day substitution of telemarketers with employees in other classifications.

Telemarketers are paid on an hourly basis, within the same pay scale range as other employees, such as staff associates and receptionists, and do not earn a commission. The telemarketers complete a time sheet with the hours they work on a daily basis, in the same manner that hours worked are reported for other employees. Full-time telemarketers are eligible for the same benefits as other full-time employees. The record does not indicate how many telemarketers are full-time or part-time. Part-time employees are scheduled specific hours each week and apparently work approximately 16 hours to 30 hours per week. Part-time telemarketers are not eligible for benefits. Some of the telemarketers have become a family service counselor, a secretary, or a clerk at one of the cemeteries.

The majority of telemarketers are located in the second floor offices in the Edgewood facility. A telemarketer supervisor/manager, Donna Surgis, is located at Edgewood. The telemarketers at Edgewood work during hours that Edgewood is normally open, 8:00 a.m. to 5:00 p.m. On occasion, the telemarketers at Edgewood work until 8:00 or 10:00 p.m., even if there is no visitation. When that occurs, the receptionist will return at night to set the alarm. The telemarketers at Edgewood share the parking lot and the breakroom on a daily basis with all employees at Edgewood.

Telemarketers interact with other Edgewood employees as they are walking in and out of the building and during lunch and smoke breaks.

As noted above, at the Edgewood facility, the telemarketers are located in a separate part of the building. The telemarketers are visible to other Edgewood employees from the offices in back as the telemarketers walk by the window.

Four or five telemarketers are located at cemetery locations and are supervised by the sales manager¹⁰ at those locations. At those locations they share similar work spaces and work in the same buildings as other employees. They also use the same break rooms, bathrooms, and parking lots. As noted above, telemarketers, at least those located at Edgewood and Chapel Hills, dress more casually than other employees who have contact with families.

The six cemeteries in the Jacksonville Cluster are managed by a grounds facility superintendent. The grounds facility superintendent, whose office is located at the Riverside Memorial Park facility, lays out the daily work load for the Jacksonville Cluster's cemeteries. The grounds facility superintendent is a salaried position. There are five or six grounds facility supervisors in the Jacksonville Cluster who report to the grounds facility superintendent. The grounds facility supervisors are paid on an hourly basis. The record does not indicate where their wages fit in the whole hourly pay range with other employees. The full-time grounds facility supervisors receive the same benefits as any full-time employee.

The cemetery crews vary in size. At the larger cemeteries, the approximate size of a crew is about five to six employees. At a smaller facility, the crew would consist of two employees, a grounds facility supervisor, the only full-time employee, and a part-

¹⁰ The record does not reflect which, if any, other employees are supervised by the sales manager.

time employee. There are apparently four grounds facility supervisors who have more than one employee working for them.

The grounds facility supervisors attend monthly meetings for the supervisors only. No other classification of employees included in the petitioned-for unit attend these meetings. They discuss subjects such as safety, workers' compensation, and the distribution and scheduling of fertilizer. They also review equipment questions, such as do they have enough mower blades, are the weed eaters working, or do they need to purchase new ones.

Both the grounds facility superintendent and grounds facility supervisors assess the skill level of the grounds facility employees. A grounds facility supervisor then assigns work to others based on their skill levels. He also directs the work of other employees. For instance, if a grave has to be dug, he would determine who is going to drive the tractor, who is going to drive the backhoe, etc. A grounds facility supervisor is also required to go to the office to get the internal authorization forms necessary to lay out a grave. A grounds facility supervisor spends over 50 percent of his work day performing manual labor, such as laying out graves. A grounds facility supervisor also operates the lawnmower, backhoe, and weed eater. He is able to fill-in for those under his supervision who are absent due to illness or vacation.

The Employer has a two-step interview process and the grounds facility supervisor might do the interviewing at the first step and the superintendent would interview at the second step. The grounds facility supervisor has the authority to recommend hiring and is the only classification of employees in the petitioned-for unit to have this authority. The grounds facility supervisor can recommend rewarding employees with a bonus. The superintendent would then observe the employees' work in connection with this recommendation.

A grounds facility supervisor does not have authority to promote others, although he is able to make recommendations to promote. The example given in the record was that if a grounds facility supervisor is working side-by-side with an exemplary employee, day in and day out, the grounds facility supervisor may recommend to the superintendent that the employee could move up to different duties and responsibilities. The superintendent, who is knowledgeable about the staff on the cemetery grounds and has a good awareness of their skill levels, would also observe the employee to see if he was deserving of a promotion.

The grounds facility supervisor has no authority to transfer employees from one location to another, nor to lay off employees or to grant employees time off or overtime. The superintendent decides how to schedule the work if there are funerals on a Saturday and overtime may be necessary.

A grounds facility supervisor may issue oral warnings, but must consult the grounds superintendent before written discipline is issued. The grounds facility supervisor can recommend the discharge of an employee. For instance, if an employee with an attendance problem is late, the grounds facility supervisor might inform the superintendent that the employee has already received a second or third letter and should be discharged consistent with the Employer's policy. The grounds facility supervisor does not have authority to independently discharge employees. All paperwork regarding a termination of employment requires the grounds superintendent's signature.

The grounds facility supervisors work with the superintendent in evaluating employees. They also sit with the superintendent if an employee is being counseled, reprimanded, or disciplined. The purpose of their presence is to be a witness.

The grounds facility crews have contact with the families. Many times after a service, the family will stay while the grounds crew finalizes the service by the lowering

of the casket and the covering of the grave. Families often request the grounds crew to help them locate a particular grave.

As stated above, grounds facility employees wear shirts with name tags that the Employer provides. The record does not indicate whether the grounds facility supervisors' uniforms differ in any manner to distinguish them from other grounds facility employees.

With respect to the funeral home industry, the Board has applied its standard case-by-case analysis of traditional community of interest factors,¹¹ and has examined whether specific job classifications perform work closely allied with the other funeral home workers,¹² or perform work that substantially contributes to the rendition of funeral arrangements.¹³ In any industry, the Board requires a petitioner to seek an election in an appropriate unit, which need not be the most appropriate unit.¹⁴ Based on the foregoing, the record evidence as a whole, and the applicable case law, I find that the telemarketers and grounds facility supervisors should be included in the unit.

TELEMARKETERS

The record evidence establishes that telemarketers share a community of interest with the other petitioned-for unit employees. In making this determination, I have considered compensation, hours of work, employment benefits, job functions, and contact with other employees. More specifically, like other unit employees, telemarketers are paid hourly, in the same range as staff associates and some receptionists. Full-time telemarketers receive the same benefits as other full-time employees. They use the same timekeeping system and work basically the same hours

¹¹ Ortiz Funeral Home Corp., 250 NLRB 730, 738 (1980).

¹² D. W. Newcomer's Sons, 117 NLRB 565 (1957).

¹³ Riverside Memorial Chapels, Inc., 226 NLRB 2 (1976).

¹⁴ Brand Precision Services, 313 NLRB 657 (1994).

as other unit employees. There was testimony that there have been occasions when the telemarketers at Edgewood worked in the evening when the facility was otherwise closed and they work on the second floor. However, these facts alone do not destroy their community of interest with other employees in the petitioned-for unit. They otherwise share the same facilities, including the same break rooms and parking lots. In reaching my conclusion, I have considered the tasks that the telemarketers perform in addition to their regular duties. More specifically, I note that telemarketers are utilized to collect receivables just like the accounts receivable clerks and funeral detail clerks. They also perform special projects and update files like the other clerical employees sought by the Petitioner. Telemarketers have also moved into other positions in the petitioned-for unit, such as family service counselors, secretaries and clericals. Moreover, cold-calling to set up appointments is a functionally integrated part of the Employer's operations. See J.C. Penney Company, Inc., 328 NLRB No. 105 (1999) (telemarketers included in a broad unit in spite of variation in hours and different supervision because of the strong community of interest). Accordingly, I find that the record fails to establish that the telemarketing employees have a community of interest separate from that of other unit employees, and I shall, therefore, include them in the unit found appropriate herein, which is, in essence, a "wall-to-wall" unit.

At the hearing, the Petitioner took the position that the telemarketing employees should be excluded as temporary or casual employees who come and go on a daily or weekly basis. It is well settled that the test for determining whether an employee is a regular part-time employee or a casual employee takes into account factors such as regularity and continuity of employment and similarity of work duties.¹⁵ Regularity does not necessarily mean a fixed schedule; rather the regularity requirement can be satisfied

¹⁵ Tri-State Transportation Co., Inc., 289 NLRB 356 (1988).

by evidence that the employee has worked a substantial number of hours within the period of employment prior to the eligibility date and there is no proof that such work has been sporadic.¹⁶ The Board has found for instance, part-time employees eligible to vote who regularly average at least 4 hours of work per week in the quarter preceding the election.¹⁷

Based upon the above and the record as a whole, I cannot conclude that the telemarketing employees' work is either sporadic, temporary, or casual. While the area vice president only "assumed" that the part-time telemarketers work between 16 and 30 hours per week, the Petitioner did not establish otherwise. Accordingly, I find that the full-time and regular part-time telemarketers¹⁸ are eligible voters.¹⁹

GROUPS FACILITY SUPERVISORS

It is well settled that the possession of any one of the indicia of supervisory authority specified in Section 2(11) of the Act is sufficient to confer supervisory status on an employee.²⁰ However, Section 2(11) of the Act requires that such authority must be exercised with independent judgment on behalf of management, and not in a routine manner.²¹ If the supervisory indicia is exercised in a merely routine, clerical, perfunctory, or sporadic manner, then supervisory status is not conferred on an employee.²² Employees who are merely conduits for relaying management information to other

¹⁶ Pat's Blue Ribbons, 286 NLRN 918, 919, fn. 6 (1987).

¹⁷ V.I.P. Movers, Inc., 232 NLRB 14, 15 (1977).

¹⁸ Of course, if certain individual telemarketers do not work regularly, their voting eligibility is subject to challenge.

¹⁹ Tri-State Transportation Co., Inc., supra; V.I.P. Movers, Inc., supra.

²⁰ Allen Services Co., 314 NLRB 1060, 1061 (1994); Auto West Toyota, 284 NLRB 659 (1987).

²¹ Juniper Industries, 311 NLRB 109, 110 (1993); Somerset Welding & Steel, 291 NLRB 913, 914 (1988); Hydro Conduit Corp., 254 NLRB 433, 437 (1981).

²² Allen Services Co., supra; Bowne of Houston, Inc., 280 NLRB 1222, 1223 (1986); Feralloy West Co., 277 NLRB 1083, 1084 (1985).

employees are not supervisors.²³ The Board will not consider titles alone to be determinative of supervisory status.²⁴ Further, the burden of providing evidence of supervisory status rests on the party asserting that such status exists.²⁵

Applying these principles to the instant case, I find that the Employer has failed to demonstrate that the grounds facility supervisors are supervisors as defined in Section 2(11) of the Act. It is clear that the grounds facility supervisors do not have, nor exercise, the authority to hire or fire employees. There is likewise no record evidence that the grounds facility supervisors “effectively recommend” hiring other than the mere assertion that they do so and that they “might” interview applicants. With regard to “effectively recommending” discharge, the sole example provided indicates that the Employer’s policies and procedures govern the situation rather than the grounds facility supervisor’s input. They also do not transfer, suspend, lay off, recall, promote or reward employees. They also do not assign overtime or adjust grievances. If there is a problem with an employee on the grounds, a grounds facility supervisor may orally counsel the employee but otherwise has to consult with the grounds superintendent. Furthermore, over 50 per cent of their work time is spent doing the same type of manual labor as other grounds facility employees in the petitioned-for unit. Indeed, the only non-manual labor task specifically mentioned by the Employer’s witness was that the grounds facility supervisor goes to the office to obtain the internal authorization forms from the office to lay out the graves. In addition, they are paid on an hourly basis, the same as the other grounds facility employees.

²³ Bowne of Houston, Inc., supra.

²⁴ Marukyo U.S.A. Inc., 268 NLRB 1102 (1984).

²⁵ S.S. Joachim & Anne Residence, 314 NLRB 1101, 1194 (1994); Northcrest Nursing Home, 313 NLRB 491, 496 fn. 26 (1993); Bowne of Houston, Inc., supra.; Tucson Gas & Electric Co., 241 NLRB 181 (1979).

The Employer maintains that the grounds facility supervisors should be excluded because they are significantly involved in the hiring process, the evaluation of employees and the discipline of their crew members. However, as noted above with respect to hiring, the testimony demonstrated only that they “might” initially interview applicants for employment, and might make a recommendation. The superintendent also interviews applicants, and the record does not establish what weight, if any, that the superintendent gives their input. With regard to the evaluation process, the record does not establish that the grounds facility supervisors actually prepare evaluations, just that there is a signature line for the employee being evaluated, the evaluator, and the supervisor who is sitting in on the evaluation. The Employer’s witness did not know to what extent the grounds facility supervisor works with the superintendent to evaluate employees. While the grounds facility supervisor may recommend that an employee receive a bonus, the record also reveals that the superintendent would then observe the employee for himself to see if the employee was deserving. With regard to discipline, there was testimony that grounds facility supervisors sit in with the superintendent when the employees are being counseled or disciplined. However, the purpose given for their presence was to be a witness, to prevent, “he said, she said” situations. Moreover, in a situation where an employee is being disciplined for attendance, the Employer’s own procedures dictate the discipline issued. According to the record, if a grounds facility supervisor observes an employee engaged in an unsafe act or not following the Employer’s procedures, the grounds facility supervisor will address it at that time. However, there is no evidence that a counseling in this type of situation would have any effect on an employee’s employment status. Moreover, the superintendent is involved in all major disciplinary actions.

The Employer also argues that the grounds facility supervisors should be excluded because they direct the work of others. While the record indicates that they

assign work to others, the Board has found that the routine direction of work by experienced employees does not qualify them as supervisors within the meaning of the Act.²⁶ Thus, the fact that more experienced employees may make some work assignments and correct inexperienced employees' work is insufficient to show supervisory status.²⁷

The record reveals that some grounds crews are larger than others. At the hearing, the Employer's attorney stated, in essence, that while a grounds facility supervisor on a crew of five or six employees may indeed be a Section 2(11) supervisor, the grounds facility supervisor on a smaller crew of only one to four employees may not. However, based on the record, the Employer has not carried its burden of proving that any grounds facility supervisor, regardless of his crew size, is a supervisor within the meaning of Section 2(11) of the Act.

Accordingly, I find that the following employees constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees, including employees in the positions of staff specialist I, staff specialist II, senior staff specialist, grounds facility assistant, grounds facility specialist, senior grounds facility specialist, grounds facility supervisor, funeral director intern, associate funeral director, funeral director, senior funeral director, apprentice embalmer, embalmer intern, associate embalmer, embalmer, senior embalmer, crematory operator, mechanic, maintenance employees, drivers, receptionist/PBX, clerk, funeral detail clerk, funeral home secretary, secretary, contract processor, dispatcher, compliance/training coordinator, floral designer, family service counselor, and telemarketer employed by the Employer in certain facilities located in Duval and Clay counties in the State of Florida, known as the Jacksonville Cluster, excluding all confidential employees, guards and supervisors as defined in the Act.

²⁶ Gem Urethane Corp., 284 NLRB 1349 (1987). Blue Star Ready-Mix Concrete Corp., 305 NLRB 429, 430 (1991).

²⁷ Adair Standish Corp., 290 NLRB 317, 322-323 (1988); Sears, Roebuck and Co., 295 NLRB 753 (1989).

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.²⁸ Those eligible shall vote whether they desire to be represented for collective-bargaining purposes by Northeast Florida Public

²⁸ In order to assure that all eligible voters have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision and Direction of Election, two (2) copies of an alphabetized election eligibility list, containing the full names and addresses of all eligible voters in the unit found appropriate, shall be filed by the Employer with the Regional Director for Region 12. North Macon Health Care Facilities, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Regional Office on or before May 11, 2000. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list.

Employees' Local 630, affiliated with Laborers' International Union of North America,
AFL-CIO.

Dated at Tampa, Florida, this 4th day of May ,2000.²⁹

Rochelle Kentov, Regional Director
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²⁹ Under the provisions of Section 102.67 of the Board's Rules and Regulations, Series 8, as amended, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W. Washington, D.C. 20570-0001. This request must be received by the Board in Washington by May 18, 2000.